

**Item N2**  
**Approval of Board**  
**Meeting Minutes**

**Tuesday, October 18 2005**

The Board met at its offices at the Portola Plaza Hotel, Two Portola Plaza, Monterey, at 1:40 p.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **ANNUAL BOARD MEETING WITH COUNTY ASSESSORS**

John Chiang opened the annual meeting of the Board and county assessors required under section 15607 of the Government Code to discuss administrative issues related to assessment and taxation laws and to promote uniformity and tax procedural matters throughout the state. Mr. Chiang welcomed the county assessors to the meeting on behalf of the Board.

### **Greetings and Introductory Remarks by Each Board Member**

Mr. Chiang commented on the extraordinary progress made by the Board and county assessors during the last eight years, in which he had the good fortune of serving as the Acting Board Member and now the Chair of the Board. Mr. Chiang conveyed pride in his colleagues for attending this meeting and expressed his hope that this is a great sign of the progress made between both the California Assessors' Association and the State Board of Equalization. He stated that the Board looks forward today to meet with the county assessors as a group and individually. Mr. Chiang expressed that he deeply cares about the assessors' concerns, issues and current projects. Mr. Chiang stated that this meeting gives the Board an opportunity to detail recent and proposed administrative changes at the Board; to address current legal issues and to describe the projects that will be coming forward. One of the accomplishments of this past year, which the Board is pleased to announce, is that the Assessment Policy and Standards Division held a training session on the local assessment appeals process. In addition, the Assessment Policy and Standards Division implemented a self-study training session on basic agricultural properties. Both training sessions are available on the Board's website for all county assessors' staffs. Mr. Chiang extended his gratitude to R. Glenn Barnes for his extraordinary leadership of the association this past year. He commented that he has had a wonderful working relationship on a personal level with Glenn's incoming President, Rick Auerbach.

Claude Parrish commented that he was honored to be at the Board / Assessors' meeting. Mr. Parrish thanked the Board Members for the progress made during the year, and in particular John Chiang, the Chair, for his support. Mr. Parrish remarked that it was important that elected bodies and elected officials work together. Mr. Parrish conveyed that he carefully examines both sides of each issue with the ultimate goal of creating bright lines for business and industry, big and small, and he believes that this is the goal in the heart of every assessor. Mr. Parrish expressed that he has enjoyed the progress made and acknowledged that there have been many valid concerns. Mr. Parrish extended his thanks to Mr. Chiang for allowing him to be on the Property Tax Committee.

Bill Leonard echoed the comments of the chair and vice-chair, mentioning that it is good to be at the meeting. He added that he is pleased the scheduling of this meeting is now coordinated with the annual county assessors' conference. Mr. Leonard noted that the meeting is

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a good place for Members and county assessors to interact with each other and focus on the issues before them. He expressed that he looked forward to today's meeting to share with the assessors what the Board is doing.

Betty T. Yee commented that it was a pleasure to be at the meeting and extended a personal note of thanks to the assessors in the counties in her district. She stated that she is approaching her first year anniversary of assuming office and expressed her deep appreciation for the guidance and orientation that many of the assessors have provided her. Ms. Yee introduced Phil Ting, newest county assessor to the Association. She also acknowledged the service of two retiring assessors in the first district who have made tremendous contributions in their field, Skip Thomson in Solano County, and Eeve Lewis in Sonoma County. Ms. Yee stated that she considers it a great compliment on behalf of the Chair, John Chiang, and her colleagues on the Board to hear from many of the assessors that this is the best-composed Board in a long time. She relayed that the Members want to be accessible during the challenges ahead.

Marcy Jo Mandel commented that it was nice to see everyone again. Ms. Mandel represents the State Controller and is glad that these meetings are joint meetings with the assessors' conference again. She indicated that a joint meeting is very helpful for relationship building and improves communication for resolving issues. Ms. Mandel requested that the assessors call her when there are issues coming before the Board that interest them. She expressed the importance of attending all of the interested parties meetings on property tax matters and stated that she finds that it is of great assistance in trying to convey to the State Controller all sides of an issue. Ms. Mandel reiterated that letters are great but sometimes a conversation can really help advance the understanding of the issue--the underlying problem that you see--and also whether there might be some sort of third way.

### **Opening Remarks by California Assessors' Association**

R. Glenn Barnes, President, California Assessors' Association, offered some opening remarks. Mr. Barnes was proud to say the association has repaired their injured relationship with the Board and staff and that he appreciates that Mr. Chiang agrees. He also noted that meeting face-to-face with the Members rather than writing letters or making phone calls was a great starting place.

Rick Auerbach, President Elect, California Assessors' Association, commented that the association's repaired relationship with the Board and staff is reflected in the efforts of John Chiang and Glenn Barnes and that as incoming president he will continue that relationship. Mr. Auerbach discussed: low-income housing rules; county assessors' ideas and suggested legislation for improving the legal entity ownership program; collaboration on a cable television manual; and, the loss of the Property Tax Administration Grant program. He stated that he plans to meet with each Member to further discuss these specific issues and any issues the Members may have concerning the county assessors.

Mr. Chiang stated for the record that he sent letters in support of the county assessors regarding the lost funding and expressed the Board's support of that issue.

***Note: These minutes are not final until Board approved.***

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**LEGAL DEPARTMENT PRESENTATION**

David Gau, Deputy Director, Property and Special Taxes Department, expressed that it was his pleasure and honor to be at the meeting. Mr. Gau commented on the changes that have taken place in the Legal Department and introduced Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division.

**Reorganization of the Board of Equalization Legal Department**

Selvi Stanislaus, Acting Chief Counsel of the Tax and Fee Programs Division, Legal Department, discussed the reorganization of the Legal Department, stating that the reorganization was approved on April 12, 2005 by the Board to further its mission to serve the public through fair, effective and efficient tax and fee administration. Ms. Stanislaus outlined the department's six divisions: Tax and Fee Programs Division; Legal Affairs Division; Appeals Division; Investigation Division; Settlement Division; and, Board Proceedings Division. Ms. Stanislaus acknowledged some positive results of the reorganization: flexibility in cross-training attorneys; improved legal opinions; increased production numbers; and, Appeals Division's independent review of property tax petitions. Ms. Stanislaus concluded that the main objective of the reorganization is to help the Board to work with the assessors and she encouraged the assessors to call or e-mail her.

**Proposed Board of Equalization Rules for California Administration and Appellate Review**

Sophia Chung, Tax Counsel, Tax and Fee Division, Legal Department, reported that staff is currently preparing the Board of Equalization's proposed rules for California Tax Administration and Appellate Review. These proposed rules will replace the Board's current Rules of Practice and will include the Board's procedures with respect to every tax and fee program administered by the Board. She commented that the ultimate goal of these proposed rules is to better serve the public by having detailed comprehensive procedures set forth in one source in a simple and coherent manner for taxpayers, practitioners, counties and all interested parties. Ms. Chung noted that in accordance with a new procedure, the Appeals Division reviews property tax petitions when there are contested issues, acting as neutral advisors to the Board. Ms. Chung expressed that the staff looks forward to receiving the assessors' comments and working with them in drafting these rules.

**Domestic Partners Legislation and Court Cases**

Mariam Baxley, Tax Counsel, Tax and Fee Division, Legal Department, reported that the Legislature recently enacted SB 565 which adds subdivision P to section 62 of the Revenue and Taxation Code. This legislation creates a registered domestic partner exclusion which is similar in scope to the inter-spousal exclusion. She further explained the importance of noting that this legislation does not confer spousal status to registered domestic partners. This newly added subdivision P applies to all property transfers that occur on or after January 1, 2006 between domestic partners who are registered with the California Secretary of State. Ms. Baxley

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discussed the Board's current litigation with several counties regarding its addition of subdivision K to Property Tax Rule 462.240. A *Letter to Assessors* will be published soon regarding the Board's position on this topic.

### **Possessory Interest – Indian Gaming / Residential Income Property on Government Land**

Michael Lebeau, Tax Counsel, Legal Department, discussed potential possessory interest in Indian casinos, specifically, whether the assessors have authority to request information from tribes and the ability to compel tribes to produce that information, and whether or not individual possessors have a possessory interest in the Indian casino properties themselves. Mr. Lebeau also discussed the residential income property and the residential income housing on government land.

### **PROPERTY AND SPECIAL TAXES DEPARTMENT PRESENTATION**

#### **Budget Change Proposal for Biopharmaceutical and Hi-tech Industry Equipment and Fixtures**

Dean Kinnee, Chief, Policy Planning and Standards Division, Property and Special Taxes Department, reported that the Board approved a Budget Change Proposal for the Department of Finance that seeks additional funding for staff to revisit the issue of lifing tables for biopharmaceutical equipment and fixtures, non-production computer and semiconductor manufacturing equipment. Mr. Kinnee mentioned that *Assessors' Handbook Section 581* is published annually with information to assist in the appraisal of business property and that it is time to revisit those factors, to determine if they are still valid.

Ms. Yee commented that she had asked staff to develop this proposal in response to several Bay Area legislators, as well as some of the biopharmaceutical industry representatives, to produce clear lifing tables that could be applied uniformly by county assessors throughout the State.

#### **Assessment Practices Survey Program**

Mickie Stuckey, Chief, County Property Tax Division, Property and Special Taxes Department, discussed plans for changes in the Assessment Practices Survey Program, which ensures that the local assessments are in full compliance with the laws. At staff's request, the California Assessors' Association provided an ad hoc committee consisting of Bruce Dear, Placer County Assessor, Rick Auerbach, Los Angeles County Assessor, and Tom Kidwell, Madera County Assessor, to aid in revamping the program. Ms. Stuckey also discussed plans to issue an annual *Letter to Assessors* summarizing the best county assessment practices discovered during the year's sampling in order to share that knowledge. The survey report format will also be revised, making it more reader friendly. Ms. Stuckey noted that a long-term goal is to examine and improve the efficiency and effectiveness of the sampling program.

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**TAXPAYERS' RIGHTS ADVOCATE'S OFFICE**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, thanked the Board Members and county assessors for inviting him to speak at the Board/Assessors' meeting. Mr. Gilman introduced Mark Sutter and announced that Mark replaced Bob Reinhard, who took a position in the County Property Tax Division. Mr. Gilman personally thanked the county assessors for working with him and his staff and commented that both he and Mark look forward to working with them in the future to resolve taxpayer problems and issues.

The Board adjourned at 3:00 p.m.

*The foregoing minutes are adopted by the Board on May 17, 2006.*

Tuesday, March 7, 2006

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS****William Logue, 303404**

1997, \$631.00 Tax, \$141.00 Late Filing Penalty

For Appellant:

William Logue, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to consider appellant's appeal for relief from the late filing penalty, and if so, has appellant established either reasonable cause for his untimely filing or that the penalty should be abated due to financial hardship.

Whether respondent abused its discretion in failing to abate interest accrued on appellant's liability.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.1)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

**Steve Wachko, 301335**

1999, \$1,779.00 Claim for Refund

For Claimant:

Joyce Rebhun

Steve Wachko, Taxpayer

Winnifred Wachko, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that the denial of a refund claim was erroneous.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.2)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

**Eugene Poats, 305198**

1998, \$977.00 Assessment

For Appellant:

Eugene Poats, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Note: These minutes are not final until Board approved.**

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Issue: Whether appellant has shown that respondent incorrectly calculated appellant's additional tax liability, based on information it received from the Internal Revenue Service indicating that appellant underreported his income.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Kenneth A. Sauer and Eliza B. Sauer, 308089**

1999, \$2,207.00 Tax, \$451.73 Late Filing Penalty

For Appellant:

Kenneth Sauer, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have met their burden to prove error in the proposed assessment.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.3)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Nancy Schultz, 288572**

1997, \$9,703.83 Claim for Refund

1998, \$4,377.68 Claim for Refund

For Claimant:

Steven G. Hoover, Attorney

Nancy Schultz, Taxpayer

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant timely filed her claims for refund prior to the expiration of the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.4)

Action: Mr. Parrish moved to sustain the action of the Franchise Tax Board and that a letter be sent to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer in the amounts of \$3,784.49 for the year 1997 and \$1,663.52 for the year 1998. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Chiang absent.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.



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Paul L. Casanova and Barbara Joan Casanova, 289775

1998, \$9,091.00 Assessment

1999, \$8,504.00 Assessment

For Appellant:

Alan K. Rubin, CPA

Paul L. Casanova, Taxpayer

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly disallowed appellants' deduction for investment interest and properly limited appellants' deduction of home mortgage interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.5)

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

Issam I. Kort, 301572

1993, \$23,082.00 Claim for Refund

For Claimant:

Issam Kort, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that there has been an overpayment of tax which may be refunded to him.

Whether appellant's 1993 California tax liability has been discharged in a bankruptcy court proceeding, and whether the Board of Equalization has jurisdiction to determine such a discharge occurred.

Whether respondent should be estopped from denying the refund claim because of alleged oral misrepresentations by one of its employees regarding bankruptcy filings and tax liabilities.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.6)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 3.7)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

Alex H. Farzami and Jennifer Farzami, 308193

1999, \$18,203.00 Assessment

2000, \$8,412.00 Assessment

For Appellant:

Alex H. Farzami, Taxpayer

Joyce Rebhun, Representative

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether cash advances from a corporation to its sole shareholder used to invest in mutual funds are properly characterized as constructive dividends and served a legitimate corporate purpose.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

The Board recessed at 11:34 a.m. and reconvened at 11:45 a.m. with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Stephen D. Moses, 268510

1992, \$61,657.00 Tax, \$15,414.25 Late Filing Penalty

For Appellant:

Stephen D. Moses, Taxpayer

Stuart A. Simon, Attorney

For Franchise Tax Board:

Renel Saplandante, Tax Counsel

Joel Brunet, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to hear appellant's appeal of the Franchise Tax Board's (respondent) denial of his request for the Tax Amnesty Program.

Whether respondent correctly determined the amount of gain properly allocated by the partnerships to appellant for the 1992 tax year.

Whether respondent correctly determined that appellant is not entitled to offset nonpassive income with passive losses claimed for 1992.

Whether respondent correctly determined that appellant had a net gain, and not a loss, from the disposition of passive activities in 1992 and, therefore, that Internal Revenue Code section 469(g) was inapplicable.

Whether respondent properly determined that appellant has not shown reasonable cause for abatement of the late filing penalty.

Whether the Board may waive the penalty imposed for appellant's failure to participate in the tax amnesty program.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.8)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 3.9)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

The Board recessed at 12:30 p.m. and reconvened at 1:50 p.m. with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Danny L. Williams, 257711

1999, \$1,317.00 Assessment

For Appellant:

Danny L. Williams, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

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Whether this Board is the proper forum for disputing a frivolous return penalty.

Whether respondent abused its discretion in refusing to abate interest.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.10)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Michael E. Hodsdon, 305183**

2001, \$1,859.00 Assessment, \$464.75 Late Filing Penalty

For Appellant:

Michael Hodsdon, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

Whether appellant has shown reasonable cause for relief from the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.11)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Shawanda Mann, 307168**

2001, \$604.80 Claim for Refund

2002, \$695.52 Claim for Refund

2003, \$669.00 Claim for Refund

For Appellant:

Shawanda Mann, Taxpayer

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed

Issue: Whether appellant is entitled to the Child and Dependent Care Expenses Credit for 2001, 2002, and 2003, pursuant to Revenue and Taxation Code section 17052.6, which incorporates by reference Internal Revenue Code section 21 (as added in 2000)

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.12)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Christopher Gyorgy, 282946**

2001, \$2,046.00 Tax, \$511.50 Late Filing Penalty

For Appellant:

Peymon Mottahedeh, Representative

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

Whether appellant has shown reasonable cause for relief from the late filing penalty.

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Whether a frivolous appeal penalty should be imposed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Steven R. Nicholas, 306724**

2001, \$4,165.00 Tax, \$1,041.25 Notice and Demand Penalty, \$1,041.25 Late Filing Penalty

For Appellant: Peymon Mottahedeh, Representative

For Franchise Tax Board: Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated any error in respondent's proposed assessment for 2001.

Whether a frivolous appeal penalty should be imposed.

Action: Upon motion Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**David C. Claunch, 281451**

1999, \$10,888.00 Tax, \$2,722.00 Late Filing Penalty

For Appellant: Peymon Mottahedeh, Representative

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in respondent's proposed assessment.

Whether appellant has shown reasonable cause so that the late filing penalty should be abated.

Whether a frivolous appeal penalty should be imposed against appellant.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**Byron Reynolds, 267947**

1999, \$2,153.00 Tax, \$1,452.75 Penalties

For Appellant: Byron Reynolds, Taxpayer

For Franchise Tax Board: Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown error in respondent's determination of his underlying tax for 1999.

Whether appellant has shown that the failure to file penalty imposed by respondent should be abated.

Whether appellant has shown that the demand penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed against appellant.

Whether the Board has jurisdiction to consider appellant's appeal from respondent's imposition of a frivolous return penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.13)

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Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board submitted the appeal for decision.

**SPECIAL TAXES APPEALS HEARINGS**

Inland 99 Cents Wholesale, Inc., 236805 (ET)

8-1-00 to 3-31-02, \$15,790.50 Tax, \$3,928.05 Negligence Penalty

For Petitioner:

Samuel B. Choi, CPA

Pung Gil Lee, Taxpayer

For Property and Special Taxes Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that certain cigarettes were stolen, lost, or damaged, and thus the determination issued by the Excise Taxes Division and Special Taxes Department is excessive.

Whether the 10-percent penalty for negligence is applicable to this determination.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:27 p.m. and reconvened at 3:37 p.m. with Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Kretek International, Inc., 253847 (ET)

1-1-01 to 12-31-01, \$113,864.00 Fee

For Petitioner:

Eugene Paolino, Attorney

For Property and Special Taxes Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable for the administrative fee imposed by Business and Professions Code section 22979.2.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Embroidertex West Ltd.*, 237064.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following orders:

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Western Web Printing, Inc., 184337 (GH)

3-1-98 to 9-30-01, \$13,830.53 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Embroidertex West Ltd., 237064 (AS)

7-1-99 to 9-30-02, \$8,044.29 Tax, \$798.83 Finality Penalty

Action: The Board deferred consideration of this matter.

Michael A. Olin and Janis G. Olin, 252307 (UT)

November 10, 2001, \$10,050.64 Tax, \$00.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

William Earl Downing, 246515 (AA)

7-1-00 to 6-30-03, \$8,773.81 Tax, \$2,527.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Jay L. Johnson Maintenance, Inc., 238356 (EH)

4-1-99 to 3-31-02, \$71,691.78 Tax

Action: Redetermine as recommended by the Appeals Division.

Richard Marshall Fine Floor, 217899 (AS)

7-5-95 to 6-30-02, \$00.00 Tax, \$00.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Paul J. Henneberry, 236469 (AA)

7-1-01 to 3-31-02, \$37,306.00

Action: Redetermine as recommended by the Appeals Division.

Trademark Construction Company, Inc., 259552 (FHA)

1-1-01 to 9-30-02, \$67,100.26 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

David & Rite Way, Inc., 333194 (AA)

August 25, 2005 Notice of Seizure and Forfeiture, \$155.74 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ty Tang and Huong N. Tritang, 332149 (AA)

July 5, 2005 Notice of Seizure and Forfeiture, \$1,577.80 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Kochai Farhad, 331604 (EA)

July 18, 2005 Notice of Seizure and Forfeiture, \$1,717.13 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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A-1 Liquor &amp; Market Corporation, Inc., 333006 (AC)

July 20, 2005 Notice of Seizure and Forfeiture, \$322.88 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Linda Han, 332099 (EA)

July 18, 2005 Notice of Seizure and Forfeiture, \$148.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Osama Nemri, 333898 (EH)

July 27, 2005 Notice of Seizure and Forfeiture, \$2,259.81 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Cimitrio Ambriz Cervantes and Jose Henry Gaeta, 333189 (AR)

August 19, 2005 Notice of Seizure and Forfeiture, \$1,022.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Loran Jay Forbes*, 299082.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following orders:

Mertistine Bass, 310912

2003, \$1,225.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Odysseus Berouklis, Jr., 301349

1999, \$3,075.82 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Steve A. Dent, 306354

2001, \$323.00 Tax, \$64.60 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Edward R. Fisher, 299010

2000, \$3,906.76 Claim for Refund

2001, \$3,576.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board in that its denial of the 2001 refund claim is reversed, but its denial of the 2000 refund claim and abatement of interest is sustained.

Tuesday, March 7, 2006

**Loran Jay Forbes, 299082**

2000, \$1,472.00 Tax, \$368.00 Late Filing Penalty

2001, \$1,765.00 Tax, \$441.25 Late Filing Penalty

Action: The Board took no action.

**Edith E. Geske, 304296**

2000, \$2,021.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Ronald Higgins, 301576**

2000, \$3,470.74 Claim for Refund

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

**International Health Institute, LLC, 305199**

1999, \$900.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Hernan Jacobo, 304294**

2001, \$1,468.00 Tax, \$367.00 Late Filing Penalty, \$367.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

**Val Jester and Karin Jester, 268505**

1999, \$1,475.23 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Luther J. McKinney, 290197**

1997, \$666.49 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Jesus A. Molina, 304197**

2002, \$673.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Nilesh M. Patel and Parul Patel, 296757**

2000, \$155.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Louis Sardonis, 304920**

1999, \$1,657.20 Assessment

2001, \$2,094.00

Action: Modify the action of the Franchise Tax Board by reducing the proposed assessment to \$18.00 and abate the accuracy-related penalty, otherwise sustain respondent's action for both years and impose a \$2,500.00 frivolous appeal penalty.



Tuesday, March 7, 2006

William E. Schenck and Karren D. Schenck, 307185

1999, \$600,169.00 Tax, \$150,042.25 Failure to Furnish Information Penalty

Action: Sustain the action of the Franchise Tax Board.

Max A. Skanes, 310933

2002, \$403.00 Claim for Refund

Action: Reverse the action of the Franchise Tax Board.

Jose A. Vivar, 308141

2003, \$408 Assessment

Action: Sustain the action of the Franchise Tax Board.

K. Lynette Walker, 308140

2000-2003, \$539.40 Claim for Refund

Action: Modify the action of the Franchise Tax Board to reduce the 2003 late payment of tax penalty to \$7.15; modify the interest to reapply payments as directed by appellant; abate interest for 2002 between September 13, 2004 to January 26, 2005; and abate interest for 2003 between August 19, 2004 to January 26, 2005.

King C. Yuen 294756

2001, \$3,619.00 Assessment

Action: Modify the action of the Franchise Tax Board to reduce the additional tax to \$1,809.00, plus applicable interest, otherwise sustain respondent's action.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following orders:

Frank A. Duarte (Deceased), 310466

2004, \$220.91

Action: Sustain the action of the Franchise Tax Board.

Yvonne E. Guerra, 310026

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Rakhil Losev, 316250

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Margaret E. McLeod (Deceased), 311071

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**Note: These minutes are not final until Board approved.**

Tuesday, March 7, 2006

Robert Edward Mickey, Jr., 315037

2004, \$356.00

Action: Sustain the action of the Franchise Tax Board.

Lee Mullen, 296205

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Denise L. Roath, 306946

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

David Singer, 307419

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kris Stapleton, 318260

2001, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sherry Turner, 315356

2002, \$1.00 or more

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matter: *Procter & Gamble Paper Products Company, 335295.*

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following orders:

Romeo H. Mamian, 89000241640 (AS)

7-1-94 to 9-30-97, \$118,487.44

Action: Approve the redetermination as recommended by staff.

Distribution Planning, Inc., 168912 (OHA)

1-1-98 to 12-31-00, \$734,182.58

Action: Approve the redetermination as recommended by staff.

Tuesday, March 7, 2006

Fereydoon Kashani, 257691 (AC)

1-1-94 to 6-30-98, \$77,322.38

Action: Approve the redetermination as recommended by staff.

Lifestyle Outdoor Products Corporation, 298666 (OHC)

1-1-01 to 12-31-03, \$565,408.42

Action: Approve the redetermination as recommended by staff.

Flambeau Products Corporation, 235166 (OHB)

7-1-99 to 6-30-02, \$148,087.29

Action: Approve the redetermination as recommended by staff.

The Pep Boys Manny Moe &amp; Jack Cal, 255267 (OHB)

10-4-98 to 6-30-02, \$1,317,419.83

Action: Approve the redetermination as recommended by staff.

Jalhoa, Inc., 326407 (BH)

7-1-04 to 6-30-05, \$50,521.90

Action: Approve the redetermination as recommended by staff.

Chevron U.S.A., Inc., 89000227840 (BH)

1-1-96 to 6-30-96, \$59,179.67

Action: Approve the denial of claim for refund as recommended by staff.

State of California, 333237 (FH)

7-1-03 to 6-30-04, \$194,941.60

Action: Approve the denial of claim for refund as recommended by staff.

Procter &amp; Gamble Paper Products Company, 335295 (OHA)

10-1-01 to 9-30-03, \$73,421.10

Action: The Board deferred consideration of this matter.

Foot Locker Retail, Inc., 336171 (OHB)

12-31-00 to 1-3-04, \$419,561.57

Action: Approve the denial of claim for refund as recommended by staff.

NEC Solutions (America), Inc., 333503 (KH)

4-1-02 to 3-31-05, \$54,942.74

Action: Approve the denial of claim for refund as recommended by staff.

Harrell Motors, Inc., 281763 (KH)

10-1-02 to 7-31-03, \$83,994.35

Action: Approve the denial of claim for refund as recommended by staff.

Tuesday, March 7, 2006

Penske Truck Leasing Company, L.P., 298299 (UT)

11-8-04 to 11-8-04, \$51,772.00

Action: Approve the denial of claim for refund as recommended by staff.

Wyle Systems, LLC, 115648 (EAA)

1-1-00 to 12-31-00, \$1,070,033.25

Action: Approve the denial of claim for refund as recommended by staff.

Mc-Donnell Douglas Corporation, 89002086140 (OHA)

1-1-95 to 6-30-95, \$1,336,579.44

Action: Approve the denial of claim for refund as recommended by staff.

Sweetwater Union High School District, 313779 (FH)

7-1-99 to 6-30-02, \$100,000.00

Action: Approve the denial of claim for refund as recommended by staff.

Electroglas, Inc., 238713 (GH)

1-1-00 to 12-31-00, \$695,476.00

Action: Approve the denial of claim for refund as recommended by staff.

Minas Corporation, 289292 (EH)

7-1-01 to 3-31-03, \$56,459.00

Action: Approve the denial of claim for refund as recommended by staff.

Echo Star Satellite Corporation, 316344 (OH)

1-1-03 to 12-31-03, \$91,478.01

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *Procter & Gamble Paper Products Company, 261793.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Albertson's, Inc., 289973 (OH)*; and, *Daimler Chrysler Corporation, 335217 (CHA)*; Mr. Chiang absent, the Board made the following orders.

G &amp; G Air Conditioning, Inc., 299760 (AA)

7-1-00 to 6-30-03, \$62,826.28

Action: Approve the credit and cancellation as recommended by staff.

**Note: These minutes are not final until Board approved.**

Tuesday, March 7, 2006

Infogenesis, 312680 (GH)

1-1-00 to 12-31-02, \$69,409.12

Action: Approve the credit and cancellation as recommended by staff.

Token Automotive, Inc., 334972 (AS)

1-1-05 to 1-31-05, \$131,446.82

Action: Approve the credit and cancellation as recommended by staff.

Viking Office Products, Inc., 333450 (OHC)

7-1-99 to 6-30-02, \$220,017.14

Action: Approve the refund as recommended by staff.

Downey Community Hospital, Foundation, 330406 (AA)

1-1-02 to 6-30-05, \$100,635.13

Action: Approve the refund as recommended by staff.

Celite Corporation, 329546 (GH)

7-1-04 to 9-30-04, \$59,486.66

Action: Approve the refund as recommended by staff.

California Portland Cement Company, 332899 (AP)

10-1-01 to 12-31-04, \$91,373.10

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 334244 (BH)

10-1-01 to 3-31-03, \$53,298.71

Action: Approve the refund as recommended by staff.

Comcast of Los Angeles, Inc., 335278 (OH)

1-1-04 to 3-31-05, \$311,632.78

Action: Approve the refund as recommended by staff.

Economy Restaurant Fixtures, Inc., 317681 (BH)

1-1-04 to 3-31-04, \$52,745.68

Action: Approve the refund as recommended by staff.

Harris Corporation, 242230 (BH)

1-1-96 to 6-30-99, \$152,861.27

Action: Approve the refund as recommended by staff.

Comcast of California I, Inc., 335282 (OH)

1-1-04 to 3-31-05, \$211,811.06

Action: Approve the refund as recommended by staff.

Tuesday, March 7, 2006

Lucky Stores, Inc., 284744 (OH)

4-30-04 to 7-29-04, \$444,564.64

Action: Approve the refund as recommended by staff.

Gonsalves &amp; Santucci, Inc., 313781 (CH)

4-1-04 to 12-31-04, \$72,997.07

Action: Approve the refund as recommended by staff.

Comcast of Fresno, Inc., 335285 (OH)

1-1-04 to 3-31-05, \$212,368.27

Action: Approve the refund as recommended by staff.

State of California, 225226 (FH)

4-1-00 to 6-30-04, \$254,488.66

Action: Approve the refund as recommended by staff.

Arrk Creative Network Corporation, 282620 (FH)

7-1-01 to 6-30-04, \$132,537.72

Action: Approve the refund as recommended by staff.

Alza Corporation, 288532 (GH)

4-1-99 to 9-30-04, \$543,757.19

Action: Approve the refund as recommended by staff.

Philips Semiconductors, Inc., 333979 (GH)

1-1-00 to 12-31-02, \$181,168.57

Action: Approve the refund as recommended by staff.

Procter &amp; Gamble Paper Products Company, 261793 (OHA)

7-1-01 to 6-30-04, \$188,138.48

Action: The Board took no action.

Comcast of California XIII, Inc., 335289 (OH)

1-1-04 to 12-31-04, \$204,273.05

Action: Approve the refund as recommended by staff.

Affiliated Computer Service, Inc., 311983 (OH)

1-1-04 to 6-30-04, \$82,632.34

Action: Approve the refund as recommended by staff.

Albertson's, Inc., 289973 (OH)

4-30-04 to 7-29-04, \$557,940.44

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105

Tuesday, March 7, 2006

Foot Locker Retail, Inc., 311527 (OHB)

12-31-00 to 1-3-04, \$179,296.75

Action: Approve the refund as recommended by staff.

Powell Electrical Mfg. Company, 329581 (OHC)

10-1-04 to 12-31-04, \$307,364.34

Action: Approve the refund as recommended by staff.

Food Group, Inc., 264510 (OHC)

4-1-01 to 9-30-03, \$118,468.16

Action: Approve the refund as recommended by staff.

Siemens Microelectronics, Inc., 152098 (OHB)

4-1-98 to 3-31-99, \$281,634.33

Action: Approve the refund as recommended by staff.

Continental General Tire, Inc., 306040 (OHB)

1-1-02 to 12-31-02, \$59,889.70

Action: Approve the refund as recommended by staff.

Arrow International, Inc., 308812 (OHB)

1-1-01 to 3-31-05, \$65,045.43

Action: Approve the refund as recommended by staff.

NEC Solutions (America), Inc., 333502 (KH)

4-1-02 to 3-31-05, \$169,909.22

Action: Approve the refund as recommended by staff.

Comcast of California IX, Inc., 335291 (OH)

1-1-04 to 2-31-05, \$291,315.25

Action: Approve the refund as recommended by staff.

Humboldt Wedag, Inc., 290238 (OHC)

10-1-01 to 9-30-04, \$108,804.06

Action: Approve the refund as recommended by staff.

Ford Motor Company, 335218 (OHA)

6-1-05 to 8-31-05, \$342,097.57

Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 335217 (CHA)

7-1-05 to 10-31-05, \$388,099.22

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Tuesday, March 7, 2006

Pleasanton Sierra Associates LP., 318427 (OHA)

4-1-05 to 5-11-05, \$54,139.87

Action: Approve the refund as recommended by staff.

Comcast of CA/CO/TX/WA, 335292 (OH)

1-1-04 to 3-31-05, \$1,638,321.50

Action: Approve the refund as recommended by staff.

Nordstrom.Com, LLC, 336195 (OH)

1-1-02 to 9-30-02, \$70,602.73

Action: Approve the refund as recommended by staff.

Ingenico, Inc., 259710 (OHC)

1-1-03 to 3-31-03, \$133,291.24

Action: Approve the refund as recommended by staff.

Gero Vita International, Inc., 330584 (EH)

7-1-97 to 9-30-00, \$57,314.75

Action: Approve the refund as recommended by staff.

Reliant Pharmaceuticals, LLC, 335078 (OHB)

9-1-00 to 3-31-05, \$244,977.99

Action: Approve the refund as recommended by staff.

Lucky Stores, Inc., 284745 (OH)

4-30-04 to 7-29-04, \$1,819,155.28

Action: Approve the refund as recommended by staff.

Maritz, Inc., 288531 (OHA)

7-1-01 to 12-31-02, \$74,711.82

Action: Approve the refund as recommended by staff.

Tokyo Boeki North America, Inc., 307859 (OHA)

1-1-03 to 12-31-04, \$89,306.62

Action: Approve the refund as recommended by staff.

Mannatech, Inc., 330250 (OHC)

4-1-05 to 6-30-05, \$56,053.02

Action: Approve the refund as recommended by staff.

Hush Puppies Retail, Inc., 329548 (OHA)

4-1-05 to 6-30-05, \$50,474.37

Action: Approve the refund as recommended by staff.



Tuesday, March 7, 2006

Suburban Propane L.P., 306074 (OHB)

7-1-99 to 6-30-02, \$194,304.07

Action: Approve the refund as recommended by staff.

Applied Graphics Technologies, Inc., 234394 (AA)

4-1-00 to 12-31-03, \$519,057.21

Action: Approve the refund as recommended by staff.

Joe Picco &amp; Associates, Inc., 333868 (EA)

4-1-02 to 3-31-05, \$78,667.06

Action: Approve the refund as recommended by staff.

Household Automotive Finance, Corporation, 240753 (FH)

10-1-00 to 12-31-02, \$5,256,188.70

Action: Approve the refund as recommended by staff.

NSB Retail Solutions, Inc., 249257 (OH)

7-1-02 to 9-30-04, \$94,916.46

Action: Approve the refund as recommended by staff.

Comcast of California II, LLC, 335293 (OHB)

1-1-04 to 3-31-05, \$320,715.65

Action: Approve the refund as recommended by staff.

Comcast of CA/CO, LLC, 335294 (OHB)

1-1-04 to 3-31-05, \$462,761.17

Action: Approve the refund as recommended by staff.

Chargers Football Company, LLC, 333205 (FH)

1-1-03 to 12-31-04, \$188,282.82

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTER, REFUND, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following order:

Restaurant Depot Enterprises, LLC, 334433 (ET)

11-22-05, \$190,287.13

Action: Approve the refund as recommended by staff.

Tuesday, March 7, 2006

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following order:

Action: Approve the 2005-06 Superior Accomplishment Award Nominees.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 7, 2006**

William Logue, 303404

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

Eugene Poats, 305198

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Dave H. Miller, 295405

2002, \$1,263.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellants use of the head of household filing status.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 7, 2006**

Kenneth A. Sauer and Eliza B. Sauer, 308089

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$5,000.00 frivolous appeal penalty.

**Tuesday, March 7, 2006**

**Nancy Schultz, 288572**

Final Action: Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the appeal be submitted for decision and brought back to the Board in April 2006 and that the transcript be prepared for Mr. Chiang's review.

**Issam I. Kort, 301572**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

**Alex H. Farzami and Jennifer Farzami, 308193**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

**Stephen D. Moses, 268510**

Final Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, Mr. Chiang absent, the Board ordered that the late filing penalty for 1992 be relieved, otherwise sustain the action of the Franchise Tax Board.

**Danny L. Williams, 257711**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

**Michael E. Hodsdon, 305183**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

**Christopher Gyorgy, 282946**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

**Byron Reynolds, 267947**

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

Tuesday, March 7, 2006

Steven R. Nicholas, 306724

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

David C. Claunch, 281451

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Shawanda Mann, 307168

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD MARCH 7, 2006**

Inland 99 Cents Wholesale, Inc., 236805 (ET)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to offer petitioner a payment plan and to inform the petitioner of the Offer in Compromise Program.

Kretek International, Inc., 253847 (ET)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Mandel but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang absent.

Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the appeal be submitted for decision and brought back to the Board in April 2006 and that the transcript be prepared for Mr. Chiang's review.

The Board adjourned at 4:20 p.m.

*The foregoing minutes are adopted by the Board on May 17, 2006.*

Note: The following cases were removed from the calendar prior to the meeting: *Moon S. Chang and Bong S. Chang, 309178; Robert K. Kent, 287713; Mamta Dhurandhar, 296754; Terry L. Moreland and Peggy J. Moreland, 294805; Terry L. Moreland and Peggy J. Moreland, 286425; Apple Computer, Inc., 152016; and, Alex Bates, 268546.*

**Note: These minutes are not final until Board approved.**

Tuesday, March 8, 2006

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Chiang, Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

**PETITION FOR RELEASE OF SEIZED PROPERTY****A & M Jelvah, Inc., 317780 (AC)**

May 23, 2005 Notice of Seizure and Forfeiture, \$404.67 Approximate Value

For Petitioner:

Mehrdad Lavi, Taxpayer

For Property and Special Taxes Department:

Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue:

Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436, or subdivision (a) of Business and Professions Code section 22974.3.

Action:

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

**SALES AND USE TAX APPEALS HEARINGS****Man Than Ngo, 288757 (EHC)**

7-1-00 to 5-20-02, \$44,916.80 Tax, \$4,493.59 Negligence Penalty

For Petitioner:

Nate Green, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues:

Whether the audited shelf test markup of 8.82 percent is excessive.

Whether petitioner has presented sufficient evidence to show that he made exempt sales of Asian food products.

Whether petitioner has presented sufficient evidence that the unreported taxable sales should be based on either the FITR's or bank deposits.

Whether petitioner was negligent.

Action:

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Brenton Motor Works, Inc., 252420 (FH)**

5-9-00 to 3-31-02, \$88,399.18 Tax

For Petitioner:

Mitchell B. Dubick, Attorney

Sherri Morris, Attorney

Shaundra L. Flanigan, Witness

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues:

Whether petitioner has established that the audited understatement of reported taxable sales is excessive.

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Whether adjustment is warranted to the amount of disallowed claimed and netted nontaxable and exempt sales.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board allowed a 3 percent void rate and ordered that the remainder of the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

**William Lyon Homes, 240354 (EAA)**

7-1-99 to 9-30-02, \$191,869.40 Tax, \$20,047.02 Negligence Penalty

For Petitioner:

W. Douglas Harris, Taxpayer

Jim Pier, Representative

Lyle A. Downey, Representative

Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying Contributions disclosed.

Issues: Whether petitioner made a taxable use of furnishings to enhance its sale of homes prior to reselling the furnishings.

Whether petitioner's sales of furnishings were subject to sales tax.

Whether petitioner was negligent, such that the 10 percent negligence penalty is appropriate.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Walter Alexander Aguilar, 181561 (AP)**

4-1-97 to 3-31-00, \$41,954.51 Tax, \$00.00 Negligence Penalty

For Petitioner:

Walter Aguilar, Taxpayer

Roberta Vasquez, Witness

Linda Perez, Bookkeeper

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to additional adjustment because unreported taxable sales based on reported and recorded taxable sales are excessive.

Whether petitioner has provided evidence to show that additional adjustment to the tax liability established from missing report of sales issued by the Department of Motor Vehicles is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:55 am and reconvened at 11:05 am with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

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**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD  
MARCH 8, 2006**

A &amp; M Jelvah, Inc., 317780 (AC)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Chiang not participating, the Board determined that staff properly seized the cigarettes.

Mr. Leonard presented three draft proposals of new language regarding counterfeit cigarette seizures to give taxpayers notice that the Board of Equalization has no legal authority to return counterfeit cigarettes or cigarettes without valid California Tax Stamps unless the cigarettes are seized illegally or erroneously (Exhibit 3.14).

Mr. Parrish directed staff to define cigars and other tobacco products.

Mr. Chiang directed the Department to report to the Board regarding the action it plans to take on the matter.

Exhibits to these minutes are incorporated by reference.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 8,  
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Man Than Ngo, 288757 (EHC)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Walter Alexander Aguilar, 181561 (AP)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

**SALES AND USE TAX APPEALS HEARING**

Ultraneon Sign Corporation, 187084 (FH)

10-1-97 to 12-31-00, \$28,720.75 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the audited understatement of materials consumed on construction contracts is excessive.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2006**

William Lyon Homes, 240354 (EAA)

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the negligence penalty be deleted, otherwise redetermined as recommended by the Appeals Division.

The Board recessed at 11:15 a.m. and reconvened at 1:00 p.m. with Mr. Chiang, Mr. Leonard, Ms. Yee and Ms. Mandel present.

**SALES AND USE TAX APPEALS HEARINGS**

A K H Company, Inc., 219583 (EA)

4-1-99 to 3-31-02, \$474,819.77 Tax

For Petitioner:

Vatche Chorbajian, Attorney

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for use tax on the cost of merchandise withdrawn from resale inventory for consumption.

Whether petitioner is liable for sales tax on its sales of equipment.

Whether petitioner underreported its taxable sales.

Whether the disallowance of some claimed bad debts is appropriate.

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the tax be redetermined without adjustment, and that petitioner be offered a two-year installment payment plan.

Conexant Systems, Inc., 152709, 286414 (EAA)

4-1-98 to 6-30-02, \$195,000.00 Claim for Refund

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the semiconductor test equipment claimant purchased and took delivery of in Japan was purchased for use in California.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board ordered that the petition and claim for refund be granted in accordance with the revised recommendation of the Sales and Use Tax Department.



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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2006**

John G. Harb, 221375 (AS)

John Harb Sewing Machine Company, Inc., 217117 (AS)

Final Action: Mr. Leonard moved to redetermine for the corporation and grant for the petitioner. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:20 p.m. in memory of the following: Sam Chu Lin, member of Mr. Chiang's staff and veteran California broadcaster; Honorable Mas Fukai, former Council Member of the City of Gardena; and, Honorable Judge Robert Sandoval, Los Angeles County Superior Court.

*The foregoing minutes are adopted by the Board on May 17, 2006.*

Note: The following cases were removed from the calendar prior to the meeting: *Kenneth H. Lawson, 132581; Perfect PC Technologies, Inc., 258181; Canyon Motors, Ltd., 219451; and, American Reprographics Company, LLC, 254516.*